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Legislative Committee Systems: A Design Perspective

CHASE STODDARD*

INTRODUCTION

Committees are the defining characteristic of the modern legislature. While the centrality and study of party politics goes back further than committee politics, the focus on committee systems emerged over the course of the twentieth century, and legislatures could not function as we understand them without this mechanism. The United States Congressional committee system is the most studied system, yet virtually every country utilizes a committee system of some sort within its legislature. Despite their ubiquity in and centrality to the operations of legislatures, committees remain insufficiently studied, especially outside of the United States. The existing body of work tends to look at an individual committee system or feature. This paper attempts to funnel the existing body of work through a design lens in order to better understand what a committee system is, what it does, and how it impacts other structures and actors.

The paper begins with an examination of committee system rules, looking to the legal sources for these rules and the significance of two categories: jurisdiction and composition. The second Part will explain six types of committees: standing, ad hoc, joint, conference, committees of the whole, and subcommittees. Each type of committee is structured differently and is expected to behave accordingly. The third Part explores the roles an individual committee could play. A committee can fulfill any and all of these roles: gatekeeping, informational gathering and dispersal, and resource negotiation and disbursement. The fourth Part enumerates the powers that a committee can be given to fulfill its role: agenda setting, oversight and delegation of legislative authority. The fifth Part will elucidate the concept of committee strength by exploring two

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categories of strength measurement: independence and cohesion. The sixth and final Part will extrapolate the costs and benefits of a strong committee system, specifically looking at how strength affects specialization of legislators, the quantity of work produced by a legislature, and the speed of legislative processes. The paper will then conclude by applying concepts from the preceding six Parts into potential design concerns—checking the executive branch and partisan politics—before suggesting areas for future study.

I. LEGISLATIVE COMMITTEE SYSTEM RULES

A legislative committee is a body operating beneath a main legislature or house, which works on matters referred to it by the parent body.¹ Beyond this basic conception, a committee and the system it operates in can branch out in numerous directions. Understanding those paths requires knowledge of their legal basis. Legislative committee rules are the foundation of committee system operations and to understand them requires looking for the source of the rule and the category of rule in question.

A. *Sources of Committee Rules*

To begin the study of any system, it is important to first examine the rules that bind the system and shape its output. The rules for a committee can be found in constitutions, statutes, and standing rules.

The clear majority of constitutions acknowledge the existence of legislative committees and have at least minimal impacts on shaping their operations.² Some constitutions merely

¹ John D. Lees & Malcom Shaw, *Introduction* in COMMITTEES IN LEGISLATURES: A COMPARATIVE ANALYSIS 3, 3 (John D. Lees & Malcom Shaw eds., 1979).

² Of the 190 constitutions available on the Constitute Project's website, 161 constitutions (or 84.7%) address legislative committees to some degree. See Search Results for "Legislative Committees," CONSTITUTE PROJECT, <https://www.constituteproject.org/search?lang=en&key=commit> (last visited Mar. 30, 2018).

authorize the legislature to create and utilize committees.³ Others presume their existence by designating certain functions to committees generally or individually but do not address the authority to create committees.⁴ The remaining constitutions authorize committee systems and fall along a spectrum between assigning a general role (such as investigation)⁵ and assigning explicit powers and creating specific committees.⁶

Beyond the constitution, rules governing committee systems can be found in statutes or other rules promulgated by the legislature or committee itself. In the United States, committees are governed by the Standing Rules of the Senate⁷ and the Rules of the House of Representatives.⁸ Even in countries with constitutional provisions governing legislative committees, these provisions often refer to standing rules or statutes for further guidance.⁹

B. Specific Rule Categories and Their Importance

There are common categories of rules across countries that affect the functioning of a committee system. This section will address (1) jurisdictional and (2) compositional rules.

1. Jurisdictional Rules

The first rule category concerns jurisdiction and jurisdictional disputes. The power and prestige of a committee is directly tied to its jurisdiction.¹⁰ Jurisdiction is defined here as the

³ For example, Ecuador's constitution provides that "[t]o fulfill its attributions, the National Assembly shall set up permanent specialized committees, in which all of its members shall participate. The law shall determine the number, establishment, and competencies of each one." CONSTITUCIÓN, Oct. 20, 2008, art. 125 (Ecuador).

⁴ India, along with many other countries, provides for immunity for any speech or vote made by a Member of Parliament in a committee, but never directly authorizes the creation of committees. *See* INDIA CONST. art. 105, § 2.

⁵ CONST. OF GAMBIA, art. 109, § 2 ("Committees may be appointed to investigate or inquire into the activities or administration of ministries or departments of the Government and such investigation or inquiry may extend to making proposals for legislation or to investigate any matter of Public importance.").

⁶ NEPALAKO SANVIDHANA [CONSTITUTION] 2015, art. 97 (Nepal).

⁷ *See* S. DOC. NO. 113-18, at 11–12, 19–39 (2013) [hereinafter *Senate Rules*].

⁸ *See* H.R. DOC. NO. 111-157, at 154–66 (2015) [hereinafter *House Rules*].

⁹ REGERINGSFORMEN [RF] 4:3 (Swed.) ("The Riksdag elects committees from among its members in accordance with rules laid down in the Riksdag Act.").

¹⁰ *E.g.*, C. Lawrence Evans, *Legislative Structure: Rules, Precedents, and Jurisdictions*, 24 LEGIS. STUD. Q. 605, 610 (1999).

policy issues that fall within a committee's purview. Jurisdiction is defined within the rules that create an individual committee. In the U.S. Congress, jurisdictional rules can be found in each house's standing rules. Standing Rule XXV of the Senate creates and defines each standing committee, listing the issues under their respective jurisdictions.¹¹ Although rare, some constitutions address jurisdiction. One example is the Constitution of Pakistan which presumes a "Finance Committee," without defining the committee's jurisdiction more specifically.¹² Jurisdictional definitions are also found in the German Basic Law, which creates a Petitions Committee and explicitly grants it the power to address petitions made to the legislature.¹³

While defining jurisdictions provides guidance on which committee controls a certain policy area, bills may be introduced that cut across the jurisdiction of multiple committees. In these instances, rules must be established to determine where legislation is considered.

Assignment of a piece of legislation to a particular committee can be left to the head of the legislative body.¹⁴ When a piece of legislation clearly falls within the jurisdiction of multiple committees, some states authorize the creation of an *ad hoc* committee to address these more complex pieces of legislation.¹⁵ Other states authorize committees to request and exchange

¹¹ For example, the Senate Judiciary Committee oversees matters relating to apportionment of representatives, bankruptcy, mutiny, espionage, counterfeiting, civil liberties, Constitutional amendments, federal courts and judges, holidays and celebrations, immigration and naturalization, interstate compacts, judicial proceedings, local courts, measures relating to claims against the United States, national penitentiaries, patents, copyrights, trademarks, protection of trade and commerce against unlawful restraints and monopolies, revision and codification of the statutes of the United States, and state and territorial boundary lines. *Jurisdiction*, COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/about/jurisdiction> (last visited Mar. 30, 2018).

¹² See PAKISTAN CONST. art. 88.

¹³ GRUNDGESETZ [GG] [BASIC LAW] art. 45c, *translation at* http://www.gesetze-im-internet.de/englisch_gg/index.html (Ger.).

¹⁴ *Senate Rules*, *supra* note 8, at 12 ("Except as provided in paragraph 3, in any case in which a controversy arises as to the jurisdiction of any committee with respect to any proposed legislation, the question of jurisdiction shall be decided by the presiding officer, without debate, in favor of the committee which has jurisdiction over the subject matter which predominates in such proposed legislation; but such decision shall be subject to an appeal.")

¹⁵ *Id.* ("Upon motion by both the majority leader or his designee and the minority leader or his designee, proposed legislation may be referred to two or more committees jointly or sequentially. Notice of such motion and the proposed legislation to which it relates shall be printed in the Congressional Record. The motion shall be privileged, but it shall not be in order until the Congressional Record in which the notice is printed has been available to

reports when one committee is considering legislation that impacts another committee's jurisdiction.¹⁶ Committees can also agree to share jurisdiction with another committee over a matter that affects multiple subject areas.¹⁷ Regardless of the methodology, a clear mechanism of assignment of bills and resolution of jurisdictional disputes must be established to avoid costly time delays.

2. *Compositional Rules*

Another type of rule governs the number and composition of committees. These rules directly impact the level of expertise each committee member has in the committee's jurisdiction and the amount of work each committee can accomplish. The number of standing committees will typically be set by the rules, with the number of subcommittees either set by the legislature or the parent committee. Some constitutions create and authorize a limited number of

Senators for at least twenty-four hours. No amendment to any such motion shall be in order except amendments to any instructions contained therein. Debate on any such motion, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than two hours, the time to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.”)

¹⁶ *E.g.*, RIKSDAGSORDNINGEN [RO] [CONSTITUTION] 4:8, *translation at* https://www.constituteproject.org/constitution/Sweden_2012.pdf?lang=en (Swed.) (“A committee may provide another committee with an opportunity to deliver an opinion concerning a matter or an issue affecting that committee's area of competence. Before a committee delivers a report containing proposals in a matter which has been raised in the Riksdag, the Committee on Finance shall be provided with an opportunity to comment, if the proposal could have significant future repercussions for public revenue and expenditure. If, during the consideration of a matter, at least five members of a committee so request, the committee shall obtain an opinion under paragraph one. The same shall apply if such a request has been put forward unconnected with the consideration of a matter, if the question relates to European Union activities. The committee may reject a request for an opinion if it is put forward during the consideration of a matter and the committee concludes that the action requested would so delay consideration of the matter that serious detriment would result. In such a case, the committee shall state in its report its reasons for rejecting the request. A committee may reach agreement [sic] with one or more other committees to prepare a matter jointly through deputies on a joint committee.”).

¹⁷ Evans, *supra* note 11.

committees,¹⁸ while others leave it to the legislature to create committees as it deems necessary.¹⁹

The assignment of members to committees is also a significant rule category. Many states acknowledge the existence of multiple political parties and require that the parties be represented proportionately on committees.²⁰ This can create problems though for smaller parties who have fewer legislators to fill their reserved seats in the committees.²¹ The specific assignment of a legislator to a committee is typically made along party lines.²² This can be determined by the party leadership to accommodate needs and requests of legislators,²³ or the assignment can be made through seniority method with more senior party members getting the more prestigious assignments.²⁴

II. COMMITTEE TYPES

This section will explore the various types of committees found throughout the world. Not all systems will feature all types of committees, nor will they be found under the same name, but any committee could be filed under one of these categories. The types of committees

¹⁸ *E.g.*, CONST. OF THE REPUBLIC OF ARMENIA, July 5, 1995, art. 73 (“There may be not more than twelve standing committees established in the National Assembly.”) However this may be less limiting than it appears, as it does not necessarily restrict the number of subcommittees.).

¹⁹ *E.g.*, CONST. OF THE REPUBLIC OF GHANA 1992, art. 103, § 2 (“Parliament shall appoint standing committees and other committees as may be necessary for the effective discharge of its functions.”).

²⁰ *E.g.*, Art. 72 Costituzione [Cost.] (It.) (“[The Rules] may also establish when and how the consideration and approval of bills may be referred to Committees, including Standing Committees, composed so as to reflect the proportion of the Parliamentary Groups.”).

²¹ William E. Crowther & David M. Olson, *Committee Systems in New Democratic Parliaments: Comparative Institutionalization*, in COMMITTEES IN POST-COMMUNIST DEMOCRATIC PARLIAMENTS 171, 187 (William E. Crowther & David M. Olson eds., 2002).

²² John D. Lees, *Committees in the United States Congress*, in COMMITTEES IN LEGISLATURES: A COMPARATIVE ANALYSIS 11, 24–25 (John D. Lees & Malcom Shaw eds., 1979) (“House Rule X stipulates that at the beginning of each Congress (1) all standing committee vacancies shall be filled by election by the House...In practice, decisions on vacancies are made by party committees with the House normally ratifying the decisions.”).

²³ See Robert J. Jackson, *Committees in the Philippine Congress*, in COMMITTEES IN LEGISLATURES: A COMPARATIVE ANALYSIS 148, 173 (John D. Lees & Malcom Shaw eds., 1979).

²⁴ Lees, *supra* note 24, at 25 (exploring the seniority system in committee assignments and its critique).

examined in this section are as follows: standing committees; ad hoc committees; joint committees; conference committees; committees of the whole; and subcommittees.

A. Standing Committees

Standing committees are the most common type of committee found around the world. They are most often referred to as standing committees but sometimes are referred to as permanent committees.²⁵ The defining characteristic of a standing committee is that it is more permanent in nature and is set within the system's rules.²⁶ Thus, the number and jurisdiction of standing committees tend to be more stable over time than other committees.²⁷ Although the functions of these committees will depend on their jurisdiction and the country in question, standing committees tend to have a greater focus on considering legislation than other types of committees.²⁸ Additionally, there is a special type of standing committee that exists when the legislature is not in session.²⁹

B. Ad Hoc Committees

Ad hoc committees are another common feature of committee systems, but these committees are more varied in their names. Ad hoc committees are also commonly known as select³⁰ or special³¹ committees. These committees are formed for a single legislative session and have a far more restricted jurisdiction. The functions of these committees will vary depending on

²⁵ *E.g.*, CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 58 (Braz.).

²⁶ *E.g.*, *Senate Rules*, *supra* note 8, at 19–31.

²⁷ Lees, *supra* note 24, at 21.

²⁸ Kenneth A. Shepsle & Barry R. Weingast, *The Institutional Foundations of Committee Power*, 81 AM. POL. SCI. REV. 85, 87 (1987).

²⁹ *E.g.*, CONST. OF THE REPUBLIC OF ANGOLA 2010, art. 156 (“The Standing committee is a National Assembly body which functions[:] a. Outside periods in which the Assembly of the Republic is in full session; b. Between the end of one legislature and the beginning of a new one; c. In any other cases stipulated in the Constitution.”).

³⁰ *E.g.*, Electoral Act 1993, pt 9, s 264 (N.Z.).

³¹ *E.g.*, CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 135.

the purpose of their creation, but ad hoc committees tend to be more investigatory than deliberative.³²

An exceptional instance of ad hoc committees is the emergency committee, an ad hoc committee created in response to a state of emergency declared by the executive branch.³³ This committee operates while the remainder of legislative functions tends to diminish or disappear for the duration of the emergency.³⁴ These committees are given powers comparable to the larger legislative body in terms of magnitude, but their jurisdiction is limited to matters arising from the emergency.³⁵ While these committees are comparable to other ad hoc committees in their presumed limited time frame, their powers are exceptionally expansive.

C. Joint Committees

Joint committees are a feature of bicameral legislatures. These committees are composed of members from each house and address issues concerning the operation of the collective legislature.³⁶ These committees can simplify deliberative and investigative functions that would normally be shared between the two houses and strengthen the legislature's collective position on this issue in relation to the executive.

D. Conference Committees

Conference committees are another feature of bicameral legislatures. When legislation passes through both houses, a conference committee forms to negotiate the inconsistencies between the two drafts.³⁷ These committees are generally composed of equal members from both

³² An exception to this can be found in the United Kingdom, where ad hoc committees form to consider bills that are introduced. David Arter, *Committee Cohesion and the 'Corporate Dimension' of Parliamentary Committees: A Comparative Analysis*, in COHESION AND DISCIPLINE IN LEGISLATURES 73, 75 (Rueven Y. Hazan ed., 1979).

³³ E.g., CONST. OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA [PAPUA N.G.] Aug. 15, 1975, art. 240.

³⁴ PAPUA N.G. art. 241.

³⁵ PAPUA N.G. art. 242.

³⁶ E.g., S. AFR. CONST., 1996, art. 45.

³⁷ E.g., CONST. OF AFGHANISTAN [AFG.] Jan. 26, 2004, art. 100.

houses of the legislature.³⁸ If a conference committee can reach an agreed upon version of the bill, it then proceeds along the legislative path as the rules normally dictate—typically moving to the executive branch for approval.³⁹ If a compromise cannot be reached, the committee is disbanded and the bills return to the respective houses.⁴⁰ Although some states use the term “joint committees” to refer to conference committees, the two categories are conceptually distinct. A conference committee has no power to address any matter beyond the text of the bills assigned to it, whereas a joint committee operates more comparably to a standing or ad hoc committee, but with the benefit of representing both houses. Interviews with legislators indicate that conference committees create less competition between the two houses and more collaboration between legislators with similar interests (such as the policy jurisdiction of the inciting bill).⁴¹

E. Committees of the Whole

A committee of the whole is the least common type of committee, with most examples found in members of the British Commonwealth and other former British colonies.⁴² A committee of the whole is when the legislature or one of the houses sits together but utilizes committee procedural rules rather than traditional floor procedure.⁴³ Although it is a type of committee, committees of the whole should generally be considered distinct from a committee system overall. A traditional purpose for having and utilizing a committee of the whole was to

³⁸ *E.g.*, CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 70.

³⁹ *See* AFG. art. 100.

⁴⁰ *Id.*

⁴¹ Francesco D’Onofrio, *Committees in the Italian Parliament*, in COMMITTEES IN LEGISLATURES: A COMPARATIVE ANALYSIS (John D. Lees & Malcom Shaw eds., 1979) at 61.

⁴² *See* PARLIAMENT OF CAN., COMMITTEES OF THE WHOLE HOUSE—HOUSE OF COMMONS PROCEDURE AND PRACTICE (2d ed. 2009); RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION 2–3, <https://www.legco.gov.hk/general/english/procedur/content/rop.pdf>; *House Rules*, *supra* note 9, at 770–98.

⁴³ *E.g.*, *House Rules*, *supra* note 9, at 770–98.

avoid the public record that accompanied traditional floor procedure.⁴⁴ While committees of the whole utilize committee procedures, they do not result in the same costs and benefits that result from the rest of a committee system.

F. Subcommittees

Subcommittees are smaller committees formed within the jurisdiction of a larger committee. A subcommittee's creation and functions are typically left to the discretion of the parent committee,⁴⁵ and their precise role can vary between systems or parent committees.

III. COMMITTEE ROLE

Another important aspect of an individual committee is its role or purpose. This can be both formal and informal, and a single committee can fulfill multiple roles. The roles can be divided into three main categories: gatekeeping; information gathering and dispersal; and resource negotiation and distribution.

A. Gatekeeping

One of the most powerful roles that a committee can play is gatekeeping. Most often this is seen in terms of legislating. Many systems require that before a bill can be considered by the main body, it must be referred to the committee with the appropriate jurisdiction.⁴⁶ Committees then have the opportunity to review, rewrite, and report on the bill—depending on the rules of the particular committee system—to the main body.⁴⁷ While real gatekeeping (preventing a bill from reaching a floor vote) is the most effective way to fulfill this role, research indicates that

⁴⁴ *Committee FAQs*, OFFICE OF THE CLERK: U.S. HOUSE OF REPRESENTATIVES, http://clerk.house.gov/committee_info/commfaq.aspx (last visited Mar. 30, 2018).

⁴⁵ *E.g.*, BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] BGBl No. 1/1930, art. 23k, ¶ 2, <http://www.ris.bka.gv.at/geltendefassung.wxe?abfrage=Bundesnormen&Gesetzesnummer=10000138> (Austria).

⁴⁶ *E.g.*, CONST. OF THE REPUBLIC OF CAMEROON 1972, art. 29, § 1.

⁴⁷ *E.g.*, 1975 SYNTAGMA [SYN.] [CONSTITUTION] 3 (Greece), art. 68.

normative gatekeeping (recommending a course of action) is also effective.⁴⁸ The legislature follows the recommendations of the committee more often than not.⁴⁹ U.S. Congressional committees are prime examples of successful gatekeepers. A study of bills introduced in the House of Representatives in 1967 indicated that 93.6% of the bills died in committee, and a study of Senate bills in the same period found that 66.6% died in committee.⁵⁰

Committees can also play a gatekeeping role in non-legislative ways. Committees can be involved in the appointment process of executive and judicial branch positions. A prominent example of the extent of a committee's gatekeeping power in this area is the refusal of the U.S. Senate Judiciary Committee to hold a hearing for Judge Merrick Garland when he was nominated to the Supreme Court by President Obama⁵¹—the committee also refused to hold hearings for many other judicial nominations made by President Barack Obama.⁵² When President Donald Trump subsequently nominated Neil Gorsuch to the Supreme Court, the Judiciary Committee scheduled and held hearings within forty-eight days of the nomination.⁵³ Committees can use gatekeeping powers to control what items move forward and at what pace.

B. Information Gathering and Dispersal

A second role that committees play is in information gathering and dispersal. The breadth of subject matter that falls before a legislature requires legislators to have access to information on a wide variety of matters. Committees address this need in different ways. While hearings

⁴⁸ MICHAEL L. MEZEY, *COMPARATIVE LEGISLATURES* 67 (1979).

⁴⁹ *Id.*

⁵⁰ *Id.* at 69.

⁵¹ Richard Cowan, *Senate Judiciary Committee Chairman Grassley Tells Garland No Hearings*, REUTERS (Apr. 12, 2016, 10:28 AM), <http://www.reuters.com/article/us-usa-court-garland-idUSKCN0X9100>.

⁵² Burgess Everett, *Conservatives: No More Obama Nominees*, POLITICO (Jan. 12, 2016, 5:10 AM), <http://www.politico.com/story/2016/01/obama-nominations-blocked-senate-judges-217589>.

⁵³ Richard Pérez-Peña, *Hearing for Neil Gorsuch, Supreme Court Nominee, Is Set for March*, N.Y. TIMES (Feb. 16, 2017), <https://www.nytimes.com/2017/02/16/us/politics/neil-gorsuch-supreme-court-senate-hearing.html>.

play a role in gatekeeping, they play a more significant role in information gathering.⁵⁴ Hearings give legislators a forum to question people on the issue before the committee. They give the committee members the opportunity to gather information that may not have been readily available from other sources or to delve deeper into particular points of fact.⁵⁵ Many systems grant committees the same power as a court to compel testimony from certain entities and individuals.⁵⁶ The information gathering capacity of a committee contributes to the expertise of its members.

Dispersing information is as important as gathering. While the committee is most directly tied to its subject matter, the larger body needs information to make rational voting decisions. The committee can help the legislature stay connected to the public by communicating the legislature's work and findings and keeping the public apprised of what the government is doing. This role is mostly filled through the drafting and publishing of reports⁵⁷ but could also be performed through press conferences and other media engagements.

Information summary and dispersion are not roles that are as expansive or even present in all systems. Some constitutions close committee proceedings and hearings to the public but mandate that a record be made publicly available.⁵⁸

C. Resource Negotiation and Distribution

Though less formally acknowledged, resource negotiation and distribution is at the heart of legislative functions, and the committee is a prime forum for this work. Particularly in single member district voting systems, an individual legislator is incentivized to provide material

⁵⁴ Lees, *supra* note 24, at 37.

⁵⁵ *Id.* at 38.

⁵⁶ *E.g.*, C.F. art. 58, § 4 (Braz.).

⁵⁷ *E.g.*, CONSTITUCIÓN 1949, art.121, §23 (Costa Rica).

⁵⁸ *E.g.*, SUOMEN PERUSTUSLAKI [S.P.] [CONSTITUTION] June 11, 1999, § 50, *translation at* <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf> (Fin.).

benefits for her constituents.⁵⁹ This gives committees that have a direct role in budgetary and appropriation matters a greater prestige. One study of legislators in the Philippines found that a legislator's opinion of the prestige a certain committee assignment was directly tied to that committee's ability to provide material benefit to the legislator's constituents.⁶⁰ Other important resources traded at the committee level are political clout and voting. A committee's power in other areas—such as gatekeeping—gives legislators incentive to negotiate with its members, especially legislators who have a vested interest in matters before a committee to which they are not assigned.⁶¹ Some theorists suggest that jurisdictional boundaries should be drawn to promote the most trading of influence between committees.⁶²

IV. COMMITTEE POWERS

Related to function, but from a different perspective, is a committee's powers. Explicit powers assigned to a committee are the most direct method to understand a committee's power and the strength of the overall committee system. The two broad categories of powers are agenda setting and oversight.

A. Agenda Setting

Agenda setting powers let a committee perform its gatekeeping function and control the legislative process in its jurisdiction. These powers can be both positive and negative. On the positive side of agenda setting is the power to initiate legislation. Some committee systems require that bills considered before a committee be offered by a member of that committee.⁶³ This gives an immense amount of power to members of the committee, as any other political

⁵⁹ Lees, *supra* note 24, at 22.

⁶⁰ Jackson, *supra* note 25, at 162.

⁶¹ Shepsle & Weingast, *supra* note 30, at 88; Evans, *supra* note 11, at 611.

⁶² Evans, *supra* note 11, at 611.

⁶³ *E.g.*, CONST. OF THE REPUBLIC OF SEYCHELLES June 21, 1993, art. 104, § 4.

player that wishes to put up a bill for consideration must partner with a member of that committee and persuade that member to offer the bill.

Negative agenda setting is the power to keep matters away from the committee or legislature.⁶⁴ An example of negative agenda setting power would be giving a committee discretion at what bills it chooses to consider. In systems where a bill must be considered by a committee before it is considered by the parent body, a committee can choose what bills to consider. The committee then has the power to keep any legislation off the agenda that it does not like or that it believes will be politically costly.⁶⁵ Negative agenda setting is more powerful than positive agenda setting.⁶⁶

A specialized form of negative agenda setting and the most significant legislative power potentially available is the ex post veto. This is an agenda setting power of a conference committee.⁶⁷ This committee takes the corresponding bills from each house and reconciles the two texts. The ex post veto gives the committee the power to cut provisions it does not like or to kill the bills altogether. Although these are committees specially formed for the purpose of reconciling the bills, the membership of a conference committee is typically drawn from the committees where the bills were initially referred, giving the initial committees additional agenda setting powers in an indirect manner.⁶⁸

⁶⁴ Sean Gailmard & Jeffery A. Jenkins, *Negative Agenda Control in the Senate and House: Fingerprints of Majority Party Power*, 69 J. OF POLITICS 689, 690 (2007).

⁶⁵ MEZEY, *supra* note , at 70.

⁶⁶ David P. Baron & John Ferejohn, *The Power to Propose*, in *MODELS OF STRATEGIC CHOICE IN POLITICS* 11, 14 (Peter C. Ordeshook ed., 1989).

⁶⁷ See Shepsle & Weingast, *supra* note 30, at 89, 95.

⁶⁸ See *id.* at 95–96.

B. Oversight

Oversight powers are what give a committee the ability to check the executive branch. Particularly, this oversight power comes in the form of hearings. The modern welfare state in many democracies requires government to monitor and administer increasingly sprawling programs.⁶⁹ Some states give committees the power to oversee these programs through hearings or other investigatory processes in order to check executive power.⁷⁰ The committee can also perform oversight if it has a role in approving the nominated head of a particular department.⁷¹

C. Delegation of Law Making

There are other powers that can be found in a committee system but are overall too uncommon to generalize to systems. For instance, some systems provide for the delegation of the power to pass legislation from the full legislature to an individual committee. Committees in Italy have the power to pass bills without referral to the parent body.⁷² This power does not apply to budgetary, electoral, and constitutional matters.⁷³ Although a study demonstrates that this power to pass bills in committee is almost exclusively used in matters that are not politically divisive, it theoretically opens the door to immense abuse of power by a rogue committee.⁷⁴ Other committee systems incorporate the capacity to delegate to a committee the power to pass legislation, but this is not presumed as in Italy. In this formulation, a vote of some percentage of the main legislative body is required to delegate the power to pass a specific bill to a specific

⁶⁹ Lees, *supra* note 24, at 14.

⁷⁰ Crowther & Olson, *supra* note 23, at 189 (suggesting that merely providing the power does not guarantee its use).

⁷¹ See 1958 CONST. art. 13 (Fr.).

⁷² Art. 72 Cost. (It.).

⁷³ *Id.*

⁷⁴ Lees, *supra* note 23.

committee.⁷⁵ If the main legislative body wishes to undo the delegation a second vote is required.⁷⁶

V. COMMITTEE SYSTEM METRICS

Committees and committee systems are often spoken of in terms of strength, but what constitutes strength in this context? There are two primary metrics that collectively contribute to a relative conception of a committee's strength: independence and cohesion.

A. *Independence*

Independence is a method of examining a committee as a unit in its relationship with other political units, like the parent legislative body or the executive branch. A committee is more independent if it is able to operate without interference from outside forces. The powers assigned to a committee are central to this measurement. Agenda setting powers determine if a committee controls the legislative matters in its jurisdiction. If a committee has fewer or weaker powers in this area, the committee's grasp on the legislation lessens, and the door is open to a take-over. Oversight could also play a role in independence by keeping a check on other players and preventing them from overstepping their boundaries and infringing on committee powers.

Amongst committees, independence is a self-reinforcing mechanism. As a committee becomes more independent, other committees or legislators are less likely to act against it.⁷⁷ The fear is that, because a committee cannot be defeated within its jurisdiction, any attempted action against a committee will only result in retaliation.⁷⁸ Another theory is that to avoid threats to its independence, a committee will attempt to accommodate other committees' wishes *ex ante*.⁷⁹

⁷⁵Art. 79, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

⁷⁶ *Id.*

⁷⁷ See Shepsle & Weingast, *supra* note 30, at 88.

⁷⁸ *Id.*

⁷⁹ *Id.*

B. Cohesion

Cohesion is a measurement that comes from the analysis of political party behavior, and it is now used in the analysis of committees and committee systems. The work on political party cohesion can be traced back to Ergun Ozbudun.⁸⁰ He defined cohesion as “the extent to which, in any given situation, group members can be observed to work together for the group’s goals in one and the same way.”⁸¹ Put in other terms, cohesion can be viewed as the extent to which a group acts as a single entity rather than a collection of individuals.⁸² In a committee context, this can be viewed as the difference between a committee as an actor and as an arena.

Choice of committee type will impact cohesion. Standing committees will likely become more cohesive as the committee members will work together more over a longer period of time when compared to other committee types.⁸³ In contrast, ad hoc committees should likely be the least cohesive as they have a more clearly defined end point. Regardless of committee type, stability in committee membership over time will also increase cohesive behavior.⁸⁴ Cohesion doesn’t necessarily lead to non-divisive political outcomes, but it does describe the behavior of the legislators internally. Thus, stability in committee membership increases the internalization of committee norms and leads to a more efficient entity.

The powers assigned to a committee will also impact cohesion. The more empowered a committee is to act, the more benefit a legislator derives from being a member of the committee. This promotes stronger identification with the committee and makes it more likely that a

⁸⁰ Reuven Y. Hazan, *Does Cohesion Equal Discipline? Towards a Conceptual Delineation*, in COHESION AND DISCIPLINE IN LEGISLATURES 1, 2 (Reuven Y. Hazan ed.) (1979).

⁸¹ *Id.*

⁸² David Arter, *Committee Cohesion and the ‘Corporate Dimension’ of Parliamentary Committees: A Comparative Analysis*, in COHESION AND DISCIPLINE IN LEGISLATURES 73, 74 (Reuven Y. Hazan ed.) (1979).

⁸³ *Id.* at 76 (“All things being equal, the higher the stability in the membership of a committee, the greater the mutual trust likely to be generated between members.”).

⁸⁴ *Id.*

legislator will choose the interests of the committee over the interests of the party if forced to choose.

Related to the concept of cohesion is the concept of discipline. Discipline is cohesion enforced through obedience or the system of rules and behavior that leads to obedience.⁸⁵ “Discipline starts where cohesion falters.”⁸⁶ In the committee context, discipline is less important. As of publication, I am aware of no rule which would allow a committee to punish an individual member. The corollary to discipline might be viewed as incentivizing policies. This is more useful in a committee context as committees often have power and other resources at their disposal that encourage commitment to the cohesion of a committee without explicitly punishing non-commitment.

VI. COSTS AND BENEFITS OF A STRONG COMMITTEE SYSTEM

Once committee strength is understood, it is important to examine what strength accomplishes and whether it is a positive or negative phenomenon. The positive or negative aspect is often a matter of political perspective. There are four primary costs and benefits of a strong committee system: specialization, quantity of work product, speed of legislative process, and separation of powers.

The biggest benefit of a committee system is specialization and the expertise it confers. As a central tenet of economic theory, specialized labor breeds expertise in that labor.⁸⁷ By dividing a legislature’s work amongst discrete committees, it allows members of those committees to gain specialization in that subject matter.⁸⁸ This relates back to committee

⁸⁵ Hazan, *supra* note 85 at 3.

⁸⁶ *Id.*

⁸⁷ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 16 (2016) (“Each individual becomes more expert in his own peculiar branch, more work is done upon the whole, and the quantity of science is considerably increased by it.”).

⁸⁸ MEZEY, *supra* note , at 54.

assignments and how those rules operate. The more stable committee assignments are from session to session, the greater the expertise the members of those committees accumulate.⁸⁹ By staying on a committee and spending more time devoted to its subject matter, a legislator becomes better able to understand that subject matter, legislate to the common good, and enact the interests of her constituents.

This expertise comes with a cost, and that is in knowledge of other committees' jurisdiction. When a legislator specializes in the subject matter of her committee assignment, she becomes more dependent on the knowledge and expertise of others when considering matters outside her committee's jurisdiction.⁹⁰ This also confers influence on committee members, letting them act as gateways to their jurisdiction.⁹¹ The expertise gained in the subject matter and the powers of the respective committee grants members greater power to bring to bear within the committee and peddle outside the committee.

Another benefit, or cost, of a strong committee system is the total amount of work accomplished by a legislature.⁹² If all matters before a legislature had to be considered by the whole body and no other, this would dramatically reduce the number of matters that could be considered at all. The existence of a committee system creates a layer of actors that consider matters before they appear before everyone else. As a basic example, if there were only two committees in a system, these two committees could accomplish twice the work of a single body in the same time span, all other factors remaining constant. At a certain threshold, there are

⁸⁹ *Id.* at 64.

⁹⁰ See Shepsle & Weingast, *supra* note 30, at 87.

⁹¹ Lees, *supra* note 24, at 36.

⁹² Kaare Strøm, *Parliamentary Committees in European Democracies*, in *THE NEW ROLES OF PARLIAMENTARY COMMITTEES* 21, 24 (Lawrence D. Longley & Roger H. Davidson, eds., 1998).

diminishing returns on creating more committees, as the limited number of legislators to fill those committees cannot attend more than a single committee at any given moment.⁹³

The strength of a committee system impacts the speed of legislative process, but the exact effect may not be clear in every situation. On the one hand, a strong committee could quickly consider bills presented to it and report its findings to the parent body. The parent body's deference to the work of that committee allows the matter to be resolved quickly by the full legislature. On the other hand, a strong committee system can also refuse to consider bills and resist the pressure to pass legislation, hold hearings for nominees, or refer bills upwards, effectively slowing or killing the legislative process. The exact effect strength will have in terms of speed will depend on a number of factors.

VII. CONCLUSIONS (HOW TO DESIGN A COMMITTEE SYSTEM)

Legislative committee systems are immensely complex and crucial to understanding the functionality of a legislature. The preceding six sections each examine one aspect of a committee system. These aspects are not isolated from each other, and it is only in summation that the ultimate impact of committee system design might be understood. This conclusion will explore a totalizing view of committee system design and how it might impact a larger constitutional design project with an eye towards two hypothetical goals: (1) checking the executive branch and (2) promoting political party building.

Proper committee system design can empower a legislature to act as an effective check on the executive branch. In terms of committee roles, both gatekeeping and informational gathering and dispersal will be important. Gatekeeping and the associated agenda powers will give committees and the legislature leverage in determining the substance of laws and other

⁹³ *Id.* at 37.

negotiations with the executive branch. Informational committees will empower other committees to act as more effective gatekeepers and to precisely employ its oversight capacities where they are needed. The number of committees per legislator should be kept low in order to promote specialization, which will weaken the legislature's reliance on the executive branch for expertise. At least a portion of the rules that create this system should be written into the text of the constitution in order to discourage executive overreach and prevent later sessions from giving away ground.

As discussed in terms of committee cohesion, party strength and committee system strength are often in tension with each other. Committee members will be less beholden to the party line in a system where more power is given to a committee. If the committee can give greater benefits to the legislator than a party can, then the legislator will be incentivized to promote committee interests over party interests. However, strong committee systems and strong party systems are not mutually exclusive. To promote party building and party politics through committee system design, greater emphasis on the rules of committee composition and assignment will be needed. If a political party is better able to reward loyalty through advantageous committee assignments, this will incentivize legislators to prioritize the party. This is not a guarantee, as was seen in the case of the Philippines.⁹⁴ As with all design concerns, context matters. If the political culture does not prioritize loyalty, giving parties the ability to reward loyalty will not guarantee that outcome.

These are just two areas in which the potentials of committee system design can be understood. However, this remains speculative. Despite the ubiquity of legislative committees around the world, there are still significant gaps in the literature. This area of study could benefit

⁹⁴ Jackson, *supra* note 25, at 162

from more extensive data analysis. Much of the existing work falls either into theoretical modeling or anecdotal case studies.⁹⁵ With more precise data gathering and analysis, the exact effects of an individual design choice should become more readily apparent. Legislative committees show no sign of giving ground, and any new study can only help future design processes.

⁹⁵ “Committees in Legislatures: A Comparative Analysis,” edited by John D. Lees and Malcom Shaw, attempted to provide this level of analysis, but its application is restricted by the limited number of countries that formed the basis of analysis and the inconsistent analysis of each individual country provided by several authors.